

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
THE MARBLE COMPANY

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Appearances:

For Appellant: Edward Landels, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of The Marble Company for refund of franchise tax and interest in the total amounts of \$5,429.56, \$4,177.26 and \$4,110.64 for the income years ended September 30, 1955, 1956 and 1957, respectively.

Appellant is a California corporation which for many years has been engaged in the business of acting as a "loan correspondent" for insurance companies and other institutional investors in the manner hereinafter described.

During the years on appeal, appellant made loans which were secured by first mortgages or first deeds of trust on real estate. The loans made by appellant may be classified as government insured "FHA" or "VA" loans, conventional or uninsured loans and construction loans. A substantial number of such loans were similar to real estate loans made by national banks,

Usually within six months from the time they were originally made, the loans were sold to life insurance companies and other institutional investors without recourse. Charges to the purchasers in excess of the amounts of the loans are characterized by appellant as "commissions." After the loans were sold, appellant serviced them by collecting installments and providing other services, such as making certain that the underlying properties were kept insured and that taxes upon them were paid.

As a general rule, appellant made no loan without prior approval by the particular insurance company or until the latter had

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committed itself to purchase the loan or, in the case of construction loans, had agreed to make a "take-out" loan at the completion of construction. Appellant then made the loan in its own name, using its own capital or funds borrowed from banks. Between the time that a loan was closed and the time when it was assigned to one of the life insurance companies, the loan papers were usually pledged with a local bank to secure funds which appellant employed to close other loans upon which it had received commitments from insurance companies. The latter always accepted the loans at the same interest rate previously negotiated with the borrowers. Appellant serviced only those loans originally made by it,

During the ~~income~~ years involved, appellant had the following capital available for loans:

1955	\$298,632.43
1946	333,769.98
1957	375,500.66

During the years involved appellant made the following loans:

<u>Year ending</u>	<u>Type</u>	<u>Number</u>	<u>Amount</u>
9/30/55	Conventional	377	\$10,933,021.02
	FHA	92	1,232,323.49
	VA	63	834,678.98
		<u>532</u>	<u>\$13,000,023.49</u>
		405	
9/30/56	Conventional	53	\$ 9,654,813.13
	FHA		617,856.17
	VA	327	4,181,039.82
		<u>785</u>	<u>\$14,453,709.12</u>
9/30/57	Conventional	379	\$10,730,489.73
	FHA	118	1,788,188.00
	VA	<u>145</u>	<u>2,398,398.00</u>
		<u>642</u>	<u>\$14,917,075.73</u>

Appellant's returns reported the following gross income:

	<u>9/30/55</u>	<u>%</u>	<u>9/30/56</u>	<u>%</u>	<u>9/30/57</u>	<u>%</u>
Interest	\$		\$ 59,471	12.19	\$ 76,432	14.54
Capital Gain	72,757	17.22	5,298	01.09		
Other Income	380,948	82.55	422,831	86.72	499,105	85.44
Dividends					112	00.02
	<u>\$463,225</u>	<u>100%</u>	<u>\$487,600</u>	<u>100%</u>	<u>\$525,649</u>	<u>100%</u>

The principal items of "Other Income" consisted of "commissions" on the sales of loans and servicing fees received on loans serviced by appellant after they were sold.

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Appellant's net interest income, after deducting the interest paid by it to banks, was \$18,774.05, \$16,096.76 and \$16,799.84 for each of the years, respectively.

In view of the above facts, the Franchise Tax Board has taken the position that for the years involved appellant was a financial corporation within the meaning of section 23183 of the Revenue and Taxation Code and was subject to the rate of tax imposed upon such *corporations*. The position of the Franchise Tax Board is based upon the conclusion that appellant was in competition with national banks.

Appellant contends that it was not, and is not now, a financial corporation within the meaning of section 23183. It also *argues* that the Franchise Tax Board may not change an established administrative practice **contrary** to the board's present position.

The issues here presented were considered in the Appeal of Stockholders Liquidating Corp., this day decided. The corporation there involved operated substantially the same as this appellant. Based upon the reasons set forth in that decision, we hold that appellant was properly classed as a financial corporation,

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of The Marble Company for refund of franchise tax and interest in the total amounts of \$5,429.56, \$4,177.26, and \$4,110.64 for the income years ended September 30, 1955, 1956 and 1957, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of February, 1963,
by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly , Member

Paul R. Leake, Member

Richard Nevins, Member

Member

ATTEST: Dixwell L. Pierce , *Secretary*